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ciples operate to restrain *bona fide* combinations among stockholders to influence corporate management where no such collateral inducements are present is an unsettled question. That understandings not having the force of contract may exist among them is undoubted. Most jurisdictions also allow actual contracts — of which voting trusts are the most common example — in which the parties are benefited not directly as individuals, but as stockholders. *Faulds* v. *Yates*, 57 Ill. 416; see MOR. PRI. CORP., 2d ed., § 477 n; 15 HARV. L. REV. 756.

The court in the principal case suggests that there was no affirmative proof that the contract was made in bad faith or would be inimical to the interests of the corporation. It is submitted, however, that if transactions of the class to which this contract belongs are opposed to public policy, the courts, in a particular case, should not inquire into the wisdom of the ultimate objects sought by such means. Moreover, if such inquiry were allowable, it would seem that the burden of upholding the contract should rest with the party claiming under it. *West* v. *Camden*, 135 U. S. 507, 514. The court also argues that a plaintiff who has himself performed should not be deprived of his remedy. This position apparently overlooks the fact that, in determining the validity of such contracts, the courts should consider not the equity of the transaction as between the parties, but the protection of corporate interests in general. Since they are illegal transactions, the plaintiff and the defendant are *in pari delicto*, and the law will leave the loss where it falls.

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SLEEPING-CAR COMPANIES NOT INSURERS OF PASSENGER'S LUGGAGE. — It has been urged with much force that a sleeping-car is practically an inn, and that therefore the same rules of liability should be applied in both cases. The absolute liability of a common carrier for goods delivered to it, and the similar liability of an innkeeper for all goods of his guest *infra hospitium*, arose in times when the dangers from dishonesty were great. The law, recognizing the peculiar opportunities of such public servants to defraud their patrons, owing to the helpless position of the latter, imposed severe liabilities. *Gordon* v. *Hutchinson*, 1 W. & S. (Pa.) 285; *Morgan* v. *Ravey*, 6 H. & N. 265. Modern courts have upheld this doctrine, though the reasons on which it is based are to-day hardly so strong. Once granting the doctrine, it seems difficult to exclude from it the case of the sleeping-car, especially since such a conveyance furnishes unusual opportunities for theft and since fault on the part of the company's servants is peculiarly difficult to prove. Theoretically, then, the cases would seem to fall within the rule. Practically, were the company held as an insurer, it would undoubtedly reduce the dangers of theft, with but slight increase of expense to the company.

This question was lately raised in the case of *Pullman, etc., Co.* v. *Hatch*, 70 S. W. Rep. 771 (Tex., Civ. App.). The court declined to hold the company as an insurer, and decided that it was liable only for loss due to the negligence or to the theft of its employees. This represents the almost uniform law. *Pullman, etc., Co.* v. *Gavin*, 93 Tenn. 53; *Pullman, etc., Co.* v. *Smith*, 73 Ill. 360. The same rule has generally been applied to passenger steamboats. *Steamboat Crystal Palace* v. *Vanderpool*, 16 B. Mon. (Ky.) 302. Only one case has been found which holds a sleeping-car company to an insurer's liability. *Pullman, etc., Co.*, v. *Lowe*, 28 Neb. 239.

The obvious similarity between the sleeping-car and the day coach has doubtless been a factor in determining the result the cases have reached. The railroad is liable for property lost in its day coaches only if it has been negligent. The reason seems to be that the luggage is never entrusted to the carrier's possession. *Tower* v. *Utica, etc., R. R. Co.*, 7 Hill (N. Y.) 47. With the introduction of sleeping-cars the railroad was held to the same but to no greater degree of responsibility for property lost in them, and it was not allowed to shift its responsibility when the sleepers were operated by a special company. *Kinsley* v. *Lake Shore, etc., R. R. Co.*, 125 Mass. 54. The courts have naturally been disinclined to impose a stricter rule of liability upon the sleeping-car company than upon the railroad. A potent factor, however, in the development of these rules is doubtless to be found in the disfavor with which the modern law looks upon absolute liability.

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DEATH IN A COMMON DISASTER. — The rule has been repeatedly laid down that in cases of death by a common disaster no presumption of survivorship exists, and that in the absence of evidence he who has the burden of proving survivorship must fail, because he cannot make out his case. *Wing* v. *Angrave*, 8 H. L. Cas. 183. The question generally arises when a common disaster befalls devisor and devisee, testator and legatee, or insured and beneficiary under a life insurance policy. It is remarkable that apparently no decided case squarely raises the question whose heir takes the estate when a devisor and his devisee perish together. The early English cases were all confined to personal property; *Wing* v. *Angrave*, *supra*, was restricted to that by the court. The only American decision involving realty was concerning land already held in trust, so that the legal title did not pass in any event. *Newell* v. *Nichols*, 75 N. Y. 78. At first sight it seems that there would be an absolute dead-lock between the heir of the devisor and the heir of the devisee, neither being in possession. The one cannot prove that the devise lapsed; the other cannot show that his ancestor took as devisee. In this dilemma it may be suggested that the land should escheat. But such an undesirable result is not necessary. The difficulty is purely one of evidence — on whom is the burden of going forward with proof — and a close examination of the situation shows that the devisor's heir can make out a *prima facie* case, whereas the devisee's heir cannot. The former need show only that he is heir of a man who died possessing land; the latter must prove a will and show that there was a devisee who was capable of taking. Obviously the burden of bringing forward evidence is on the devisee's heir and consequently he must lose.

In cases of personalty, where the title vests at once in the executor or administrator, the controversy is as to who can force him to convey. Here the next of kin of the deceased legatee cannot show that such legatee ever acquired a vested interest; nor can the residuary legatee show that the legacy lapsed. Thus neither can prevail against the executor, who, therefore, continues to hold the property. But as he cannot hold for himself, a constructive trust arises in favor of the testator's estate, or next of kin. In reaching this conclusion some authorities have held that by a necessary rule of construction the next of kin are favored. See 14 HARV. L. REV. 538. Others state the rule that "for purposes of distribution" both the decedents must be assumed to have perished at the same moment. *Goods*